



TO AF
F

PATENT
Attorney Docket No. 05725.0905-00

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)
Valérie DE LA POTERIE et al.) Group Art Unit: 1616
Application No.: 09/881,097) Examiner: Lamm, Marina
Filed: June 15, 2001)
For: **FILM-FORMING COSMETIC**) Confirmation No.: 7312
COMPOSITION)

Mail Stop Appeal Brief--Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)

Transmitted herewith is the APPEAL BRIEF in this application with respect to the
Notice of Appeal filed on April 19, 2006.

This application is on behalf of

Small Entity Large Entity

Pursuant to 37 C.F.R. 41.20(b)(2), the fee for filing the Appeal Brief is:

\$250.00 (Small Entity)

\$500.00 (Large Entity)

TOTAL FEE DUE:

Appeal Brief Fee \$500.00

Extension Fee \$2160.00

Total Fee Due \$2660.00

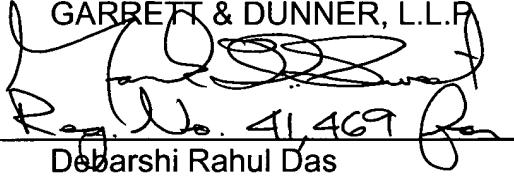
Enclosed is a check for \$2660.00 to cover the above fees.



PATENT
Application No.: 09/881,097
Attorney Docket No. 05725.0905-00

PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to our Deposit Account No. 06-0916. A duplicate copy of this paper is enclosed for use in charging the deposit account.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: 
Debarshi Rahul Das
Reg. No. 55,100

Dated: November 20, 2006



PATENT
Attorney Docket No. 5725.0905-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Valérie DE LA POTERIE et al.) Group Art Unit: 1616
Application No.: 09/881,097) Examiner: Lamm, Marina
Filed: June 15, 2001)
For: **FILM-FORMING COSMETIC**) Confirmation No.: 7312
COMPOSITION)
)

Attention: Mail Stop Appeal Brief-Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed April 19, 2006, and further to Board Rule 41.37, Appellant presents this brief and enclose herewith a check for the fee of \$500.00 required under 37 C.F.R. § 1.17(c).

This Appeal Brief is being filed concurrently with a petition for an Extension of Time for Five months, and the appropriate fee. Applicants note that since November 19, 2006 was a Sunday, this Appeal Brief filed November 20, 2006, the next succeeding business day, is timely.

This Appeal responds to the Final Office Action dated October 20, 2005, wherein claims 1-10, 12, 13, 15-18, 21-56 and 59 were rejected.

500.00 0P

11/21/2006 WABDEL1 00000065 09881097

02 FC:1402

Table of Contents

I.	Real Party In Interest	3
II.	Related Appeals and Interferences.....	4
III.	Status Of Claims	5
IV.	Status Of Amendments.....	6
V.	Summary Of Claimed Subject Matter.....	7
VI.	Grounds of Rejection To Be Reviewed on Appeal.....	10
VII.	Argument	11
	Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)	i
	Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)	xi
	Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)	xii

I. Real Party In Interest

L'Oréal S.A. is the assignee of record.

II. Related Appeals and Interferences

Appellants, Appellants' undersigned legal representative, or L'Oréal S.A. know of no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status Of Claims

Claims 1-10, 12, 13, 15-19, and 21-59 are pending in this application. Claims 57 and 58 were withdrawn from consideration by the Examiner. Claim 20 was canceled. No claims have been allowed.

In the Final Office Action, claims 1-10, 12, 13, 15-18, 21-56 and 59 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claim 19 was objected to as being dependent on a rejected base claim, and the Office indicated that it would be allowable if rewritten in independent form including all the limitations of the base claims and any intervening claims. Appellants acknowledge and appreciate that the Examiner indicated that claim 19 contains allowable subject matter.

The rejection of claims 1-10, 12, 13, 15-18, 21-56 and 59 is being appealed. A complete listing of the pending claims is included in the attached appendix.

IV. Status Of Amendments

No amendments to the claims were filed subsequent to the final rejection dated October 20, 2005. The Terminal Disclaimer filed March 20, 2006 was entered into the record. See Advisory Action dated April 24, 2006.

V. Summary Of Claimed Subject Matter

The present invention relates to a cosmetic composition forming a film which may exhibit at least one of good resistance to cold water and may be removed with hot water, comprising at least one film-forming polymer and at least one thermal transition agent. Specification at [0001].

One embodiment of the present invention, as recited in independent **claim 1**, is directed to a cosmetic composition for a keratinous material comprising at least one film-forming polymer; and at least one thermal transition agent chosen from semi-crystalline compounds, which undergoes a change of state at a transition temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t , wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable, at the temperature of the keratinous material, of forming a film having a resistance (R_c) to hot water maintained at 40°C, of less than or equal to 15 minutes, and a resistance (R_f) to cold water, maintained at 20°C such that $R_f - R_c \geq 8$ minutes, and further wherein said at least one film-forming polymer and said at least one thermal transition agent are different. Specification at [0001] and [0009].

Another embodiment of the present invention, as recited in independent **claim 54**, is directed to a mascara comprising, in a physiologically acceptable medium, at least one film-forming polymer, and at least one thermal transition agent chosen from semi-crystalline compounds, which undergoes a change of state at a transition temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one

thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t , wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable of forming a film, at the temperature of a keratinous material to which said mascara is applied, wherein the film has a resistance (R_c) to hot water maintained at 40°C of less than or equal to 15 minutes, and a resistance (R_f) to cold water maintained at 20°C, such that $R_f - R_c \geq 8$ minutes, and wherein said at least one film-forming polymer and said at least one thermal transition agent are different.

Specification at [0001], [0002], and [0009].

A further embodiment of the present invention, as recited in independent **claim 55**, is directed to a cosmetic care or make-up process for a keratinous material, comprising applying to the keratinous material a cosmetic composition comprising, at least one film-forming polymer, and at least one thermal transition agent chosen from semi-crystalline compounds, which undergoes a change of state at a transition temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t , wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable, at the temperature of the keratinous material, of forming a film having a resistance (R_c) to hot water, maintained at 40°C, of less than or equal to 15 minutes, and a resistance (R_f) to cold water, maintained at 20°C, such that $R_f - R_c \geq 8$ minutes, and further wherein said at least one film-forming polymer and said at least one thermal transition agent are different. Specification at [0001], [0009], and [0010].

An additional embodiment of the present invention, as recited in independent **claim 56**, is directed to a method for obtaining a film comprising, applying to a keratinous material a cosmetic composition comprising, at least one film-forming polymer, and at least one thermal transition agent chosen from semi-crystalline compounds, which undergoes a change of state at a transition temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t , wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable, at the temperature of the keratinous material, of forming a film having a resistance (R_c) to hot water, maintained at 40°C, of less than or equal to 15 minutes, and a resistance (R_f) to cold water, maintained at 20°C, such that $R_f - R_c \geq 8$ minutes, and further wherein said at least one film-forming polymer and said at least one thermal transition agent are different. Specification at [0001], [0009], and [0011].

VI. Grounds of Rejection To Be Reviewed on Appeal

The rejection of claims 1-10, 12, 13, 15-18, 21-56 and 59 is being appealed.

VII. Argument

Each claim of the present application is separately patentable, and upon issuance of a patent will be entitled to a separate presumption of validity under 35 U.S.C. § 282. For the reasons set forth below, Appellants submit that the rejection of claims 1-10, 12, 13, 15-18, 21-56 and 59 under 35 U.S.C. § 112, first paragraph, is improper and should be reversed

A. The standard for assessing compliance with the written description requirement

To satisfy the written description requirement of Section 112, there must be sufficient information in the specification to show that the inventor possessed the invention at the time of the original disclosure. See e.g., *Pandrol USA, LP v. Airboss Railway Prods., Inc.*, 424 F.3d 1161, 1165, 76 USPQ2d 1524, 1526 (Fed. Cir. 2005) (affirming a summary judgment that claims to a railroad tie were not invalid for lacking an adequate written description to support claim limitations reciting an “adhering material”); *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003) (Federal Circuit rules that substantial evidence supported jury verdict that asserted claim had an adequate written description and that jury’s finding that one of skill in the art would discern possession of the invention at the time of filing was supported by substantial record evidence). The possession test requires assessment from the viewpoint of one of skill in the art. *Pandrol*, 424 F.3d at 1165, 76 USPQ2d at 1526.

Possession of the invention is shown by describing the invention, with all its claimed limitations. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). This is accomplished by such descriptive means

as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention. *Id.* The patent specification must describe an invention in sufficient detail that one skilled in the art can clearly conclude that the inventor invented what is claimed, but “the disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue.” *KAO Corp. v. Unilever United States, Inc.*, 441 F.3d 963, 968, 78 USPQ2d 1257, 1260 (Fed. Cir. 2006). A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971); see also PTO Written Description Guidelines at 4, <http://www.uspto.gov/web/menu/written.pdf> (“There is a strong presumption that an adequate written description is present in the specification as filed”). The Examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description.

The Examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. See PTO Written Description Guidelines at 4, <http://www.uspto.gov/web/menu/written.pdf>; see also M.P.E.P. § 2163 III. A. at 2100-178 (8th Ed. 2006). Moreover, in rejecting the claims, the Office must set forth express findings of fact that there is a lack of written description. M.P.E.P. § 2163 III. A. at 2100-178 (8th Ed. 2006). These findings should include: (A) identification of the claim limitation at issue; and (B) establishment of a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not

have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. *Id.*

B. The rejection of record fails to express findings of fact that there is a lack of Written Description Support

According to the Examiner, claims 1-10, 12, 13, 15-18, 20-56 and 59 under 35 U.S.C. § 112, first paragraph, fail to comply with the written description requirement because the claims contain subject matter which was not described in the specification in such a way to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention. Office Action dated January 11, 2005 at page 3.

Specifically, the Examiner stated

There are semi-crystalline polymers that would be encompassed by the claim, that are not described in the specification. The instant claims recite a genus of semi-crystalline compounds that are defined only by their transition temperature and lack of water solubility at a temperature below the transition temperature. To provide evidence of a claimed genus, the specification must provide sufficient distinguishing identifying characteristics of the genus . . . the specification does not provide adequate written description of the claimed genus because one skilled in the art can not structurally visualize any semi-crystalline thermal transition agents, except for the single disclosed polycaprolactones; thereby, not reasonably meeting the written description requirements of 35 U.S.C. 112, first paragraph.

Id. at pages 3 and 4.

The Examiner clearly has not met her burden in the present case. At a minimum, the Examiner has not set forth express findings to support the written description rejection. The Examiner concedes that the specification provides adequate written description support for the polycaprolactones species. *Id.* at page 4. Notably, however, and as Appellants have argued in the record, Federal Circuit case law establishes that a single species can provide adequate written description support for a larger genus

where the disclosure provides sufficient information and guidance that one skilled in the art would readily know the other members of the genus that could be used. See e.g., *Utter v. Hiraga*, 845 F.2d 993, 998-99, 6 USPQ2d 1709, 1714 (Fed. Cir. 1988) (affirming ruling that applicant's Japanese specification that described in detail scroll mechanism with an internal pivot and while not expressly claiming an external pivot, did not disclaim an external pivot and cited prior art that described external pivots, supported a generic count in an interference that was silent as to location of the pivot point); *In re Smythe*, 480 F.2d 1376, 178 USPQ 279 (CCPA 1973) (reversing PTO's written description rejection of claims that claimed the use of an "inert fluid" in a claimed method, where the written description and the claims as originally filed only described the use of "air or other inert gas" because the specification connoted that the important functional aspect of matter required fluid characteristics, and therefore, the use of a liquid/fluid was inherently disclosed); *Bilstad v. Wakalopulos*, 386 F.3d 1116, 1124-1125, 72 USPQ2d 1785, 1791-92 (Fed. Cir. 2004) ("[T]his court has continued to apply the rule that disclosure of a species may be sufficient written description support for a later claimed genus including that species")

Although there are exceptions to the general rule that the disclosure of a species provides sufficient written description support for a later filed claim directed to the genus, it is limited to cases in which "the difference between members of the group is such that the person skilled in the art would not readily discern that other members of the genus would perform similarly to the disclosed members. . . ." *Bilstad v. Wakalopulos*, 386 F.3d 1116, 1125, 72 USPQ2d 1785, 1791-92 (Fed. Cir. 2004). In this case, however, it is clear that the other members of the genus would perform similarly

by the fact that the genus of thermal transition agents is explicitly defined by (1) the fact that they are semi-crystalline compounds; (2) a specific transition temperature range; and (3) the lack of water solubility below the transition temperature.

Moreover, the Examiner has cited no authority for the proposition that the absence of the recitation of structure alone is a sufficient reasonable basis to challenge the adequacy of the written description. Indeed, the Examiner, by his own admission, concedes that structure is only *one factor* to be considered. Office Action dated January 11, 2005, at page 4. Appellants respectfully assert that other factors, such as the genus being defined by its recited properties, i.e., the semi-crystalline nature, the transition temperature range, and the lack of water solubility below the transition temperature, would serve to describe the claimed invention.

In answer to Appellants' arguments in the Response filed July 11, 2005, the Examiner, without further explanation, maintains only that "instant specification **does not** provide sufficient information and guidance for one skilled in the art as to what members of the genus of semi-crystalline compounds having the specified transition temperature and water-solubility, other than polycaprolactones, could be used in the instant invention." Office Action dated October 20, 2005 at page 3 (emphasis in original).

Again, Appellants reiterate that, in two Office Actions, the Examiner has not yet set forth express findings of fact regarding the conclusion that the claims lack written description as is her burden. Specifically, the Examiner still has not set forth *why* one skilled in the art would not readily know other members of the functionally defined genus of claim 1 other than polycaprolactones.

Moreover, the Examiner's conclusory assertion is simply incorrect. One skilled in the art would clearly know what members of the genus of semi-crystalline compounds could be used in the instant invention—those that meet the claimed transition temperature range, and possess a lack of water solubility below the transition temperature. As explained above, one may show possession of the claimed invention using such descriptive means as words, formulas, etc. Here, Appellants have done just that by the transition temperature and water solubility limitations in the claims and specification. See specification at [0009].

Finally, the Examiner alleges that it is not clear what the other members of the genus are and invites applicant to "name such compounds, so that the Examiner is able to fully search the entire scope of the claims." Office Action dated October 20, 2005, at page 4. Appellants respectfully assert that naming such compounds is unnecessary as the specification clearly sets forth the properties of the claimed thermal transition agents. Knowing these properties, coupled with the example of polycaprolactones set forth in the specification, would allow other suitable thermal transition agents to be identified. The specification provides the guidance for such a selection.

Accordingly, for at least these reasons and the reasons of records, Appellants request that this ground of rejection be withdrawn.

Conclusion

In view of the foregoing, Appellants respectfully request that the Examiner's Section 112, first paragraph rejection be reversed and pending claims 1-10, 12, 13, 15-19, and 21-59 be allowed.

Please grant any extensions of time required to enter this Brief and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 20, 2006

By: Debarshi Rahul Das
Reg. No. 55,100



Application No.: 09/881,097
Attorney Docket No.: 5725.0905-00

Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)

1. (Previously Presented) A cosmetic composition for a keratinous material comprising:
 - at least one film-forming polymer; and
 - at least one thermal transition agent chosen from semi-crystalline compounds, which undergoes a change of state at a transition temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t , wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable, at the temperature of the keratinous material, of forming a film having a resistance (R_c) to hot water maintained at 40°C, of less than or equal to 15 minutes, and a resistance (R_f) to cold water, maintained at 20°C such that $R_f - R_c \geq 8$ minutes, and further wherein said at least one film-forming polymer and said at least one thermal transition agent are different.
2. (Original) A composition according to claim 1, further comprising a physiologically acceptable medium.
3. (Original) A composition according to claim 1, wherein the film has a resistance (R_c) to hot water maintained at 40°C of less than or equal to 12 minutes.

4. (Original) A composition according to claim 1, wherein the film has a resistance (Rc) to hot water maintained at 40°C of less than or equal to 10 minutes.
5. (Original) A composition according to claim 1, wherein the film has a resistance (Rf) to cold water maintained at 20°C water ranging from 8 to 120 minutes.
6. (Original) A composition according to claim 5, wherein the film has a resistance (Rf) to cold water maintained at 20°C water ranging from 23 to 120 minutes.
7. (Original) A composition according to claim 1, wherein $Rf - Rc \geq 10$ minutes.
8. (Original) A composition according to claim 1, wherein the at least one thermal transition agent has a transition temperature ranging from 25°C to 60°C.
9. (Original) A composition according to claim 8, wherein in the at least one thermal transition agent has a transition temperature ranging from 30°C to 60°C.
10. (Original) A composition according to claim 1, further comprising at least one compound chosen from dyestuffs and fillers.
11. (Cancelled)
12. (Previously Presented) A composition according to claim 1, wherein the melting point of the at least one thermal transition agent ranges from 25°C to 60°C.
13. (Previously Presented) A composition according to claim 12, wherein the melting point of the at least one thermal transition agent ranges from 30°C to 60°C.
14. (Cancelled)
15. (Original) A composition according to claim 1, wherein the at least one thermal transition agent is chosen from polymers with a hydroxyl number of at least 5.
16. (Original) A composition according to claim 15, wherein the hydroxyl number is at least 25.

17. (Original) A composition according to claim 15, wherein the polymers with a hydroxyl number of at least 5 have a weight-average molecular weight of less than or equal to 10,000.

18. (Original) A composition according to claim 17, wherein the polymers with a hydroxyl number of at least 5 have a weight-average molecular weight ranging from 500 to 5000.

20. (Cancelled) A composition according to claim 1, wherein the at least one film-forming polymer and the at least one thermal transition agent are the same compound.

21. (Original) A composition according to claim 1, wherein the at least one thermal transition agent is present in the composition in an amount ranging from 0.1% to 30% by weight relative to the total weight of the composition.

22. (Original) A composition according to claim 21, wherein the at least one thermal transition agent is present in the composition in an amount ranging from 0.5% to 25% by weight relative to the total weight of the composition.

23. (Original) A composition according to claim 22, wherein the at least one thermal transition agent is present in the composition in an amount ranging from 3% to 15% by weight relative to the total weight of the composition.

24. (Original) A composition according to claim 1, wherein the at least one film-forming polymer is chosen from free-radical polymers, polycondensates of natural origin, and polymers of natural origin.

25. (Original) A composition according to claim 1, wherein the at least one film-forming polymer is chosen from vinyl polymers, polyurethanes, polyesters, and cellulose polymers.

26. (Original) A composition according to claim 1, wherein the at least one film-forming polymer is present in the form of particles dispersed in an aqueous medium.

27. (Original) A composition according to claim 26, wherein the particles dispersed in an aqueous medium are chosen from acrylic polymers and polyurethanes.

28. (Original) A composition according to claim 27, wherein the particles dispersed in an aqueous medium are chosen from polyurethanes.

29. (Original) A composition according to claim 26, wherein the particles dispersed in an aqueous medium ranges in size from 10 nm to 500 nm.

30. (Original) A composition according to claim 29, wherein the particles dispersed in an aqueous medium ranges in size from 20 nm to 300 nm.

31. (Original) A composition according to Claim 26, further comprising at least one film-forming auxiliary which promotes the formation of a film with the at least one film-forming particles dispersed in an aqueous medium.

32. (Original) A composition according to claim 1, wherein the at least one film-forming polymer is present in the form of surface-stabilized particles dispersed in a liquid fatty phase.

33. (Original) A composition according to claim 32, wherein the surface-stabilized particles dispersed in a liquid fatty phase have a size ranging from 10 nm to 500 nm.

34. (Original) A composition according to claim 33, wherein the surface-stabilized particles dispersed in a liquid fatty phase have a size ranging from 20 nm to 300 nm.

35. (Original) A composition according to claim 32, wherein the liquid fatty phase comprises a volatile liquid fatty phase, optionally mixed with a non-volatile liquid fatty phase.

36. (Original) A composition according to claim 32, wherein the liquid fatty phase is present in the composition in an amount ranging from 5% to 98% by weight relative to the total weight of the composition.

37. (Original) A composition according to claim 36, wherein the liquid fatty phase is present in the composition in an amount ranging from 20% to 85% by weight relative to the total weight of the composition.

38. (Original) A composition according to claim 35, wherein the non-volatile liquid fatty phase is present in the composition in an amount ranging from 0% to 80% by weight relative to the total weight of the composition.

39. (Original) A composition according to claim 38, wherein the non-volatile liquid fatty phase is present in the composition in an amount ranging from 0.1% to 80% by weight relative to the total weight of the composition.

40. (Original) A composition according to claim 39, wherein the non-volatile liquid fatty phase is present in the composition in an amount ranging from 1% to 50% by weight relative to the total weight of the composition.

41. (Original) A composition according to claim 32, wherein the surface-stabilized particles are stabilized with at least one stabilizer chosen from block polymers, grafted polymers, and random polymers.

42. (Original) A composition according to claim 41, wherein the at least one stabilizer is chosen from grafted block polymers and block polymers comprising at least one block resulting from the polymerization of ethylenic monomers comprising at least one optionally conjugated ethylenic bond and at least one block of a styrene polymer.

43. (Original) A composition according to claim 32, wherein the liquid fatty phase comprises at least one oil chosen from oils of mineral origin, animal origin, plant origin, and synthetic origin, hydrocarbon-based oils, fluoro oils, and silicone oils.

44. (Previously Presented) A composition according to claim 32, wherein the liquid fatty phase is at least one compound chosen from:

non-aqueous liquid compounds having a global solubility parameter according to the Hansen solubility space of less than $17 \text{ (MPa)}^{1/2}$, and monoalcohols having a global solubility parameter according to the Hansen solubility space of less than or equal to $20 \text{ (MPa)}^{1/2}$.

45. (Original) A composition according to claim 43, wherein said at least one oil is chosen from oils volatile at room temperature.

46. (Original) A composition according to claim 1, wherein the at least one film-forming polymer is present in the composition in a solids content ranging from 5% to 60% by weight relative to the total weight of the composition.

47. (Original) A composition according to claim 46, wherein the at least one film-forming polymer is present in the composition in a solids content ranging from 10% to 45% by weight relative to the total weight of the composition.

48. (Original) A composition according to claim 47, wherein the at least one film-forming polymer is present in the composition in a solids content ranging from 15% to 35% by weight relative to the total weight of the composition.

49. (Original) A composition according to claim 1, wherein the at least one film-forming polymer and the at least one thermal transition agent are present in the composition in a film-forming polymer/thermal transition agent weight ratio ranging from 0.1:1 to 20:1.

50. (Original) A composition according to claim 49, wherein the at least one film-forming polymer and the at least one thermal transition agent are present in the composition in a film-forming polymer/thermal transition agent weight ratio ranging from 0.5:1 to 10:1.

51. (Original) A composition according to claim 50, wherein the at least one film-forming polymer and the at least one thermal transition agent are present in the composition in a film-forming polymer/thermal transition agent weight ratio ranging from 1:1 to 8:1.

52. (Original) A composition according to claim 1, further comprising at least one additive chosen from thickeners, preserving agents, fragrances, sunscreens, free-radical scavengers, waxes, oils, moisturizers, vitamins, fillers, surfactants, plasticizers, sequestrants, proteins, ceramides, acidifying agents, basifying agents, and emollients.

53. (Original) A composition according to claim 1, wherein the composition is in a form chosen from a mascara, an eyeliner, a product for the lips, a blusher, an eyeshadow, a foundation, a make-up product for the body, a concealer product, a product for the nails, an anti-sun composition, a skin coloring composition, and a skincare product.

54. (Previously Presented) A mascara comprising, in a physiologically acceptable medium,

at least one film-forming polymer, and

at least one thermal transition agent chosen from semi-crystalline compounds,

which undergoes a change of state at a transition temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t ,

wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable of forming a film, at the temperature of a keratinous material to which said mascara is applied,

wherein the film has a resistance (R_c) to hot water maintained at 40°C of less than or equal to 15 minutes, and a resistance (R_f) to cold water maintained at 20°C, such that $R_f - R_c \geq 8$ minutes, and

wherein said at least one film-forming polymer and said at least one thermal transition agent are different.

55. (Previously Presented) A cosmetic care or make-up process for a keratinous material, comprising applying to the keratinous material a cosmetic composition comprising,

at least one film-forming polymer, and

at least one thermal transition agent chosen from semi-crystalline compounds, which undergoes a change of state at a transition temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t ,

wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable, at the temperature of the keratinous material, of forming a film having a resistance (Rc) to hot water, maintained at 40°C, of less than or equal to 15 minutes, and a resistance (Rf) to cold water, maintained at 20°C, such that $Rf-Rc \geq 8$ minutes, and further

wherein said at least one film-forming polymer and said at least one thermal transition agent are different.

56. (Previously Presented) A method for obtaining a film comprising, applying to a keratinous material a cosmetic composition comprising,

at least one film-forming polymer, and

at least one thermal transition agent chosen from semi-crystalline compounds, which undergoes a change of state at a transition

temperature, T_t , chosen within a temperature range from 25°C to 80°C, the at least one thermal transition agent being not water-soluble in water maintained at a temperature below the transition temperature, T_t ,

wherein the at least one film-forming polymer and the at least one thermal transition agent are present in an amount which is sufficient so that the composition is capable, at the temperature of the keratinous material, of forming a film having a resistance (R_c) to hot water, maintained at 40°C, of less than or equal to 15 minutes, and a resistance (R_f) to cold water, maintained at 20°C, such that $R_f - R_c \geq 8$ minutes, and further

wherein said at least one film-forming polymer and said at least one thermal transition agent are different.

59. (Original) A composition according to claim 1, further comprising an emulsifier, wherein the emulsifier is present in the composition in an amount less than 0.5% by weight relative to the total weight of the composition.

Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)

None

Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)

None